

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

Bay State Gas Company

D.T.E. 05-27

**THE ATTORNEY GENERAL'S APPEAL TO THE FULL COMMISSION OF HEARING
OFFICER'S RULING ON INTERVENTION AND RENEWED OPPOSITION TO FULL
PARTY STATUS OF KEYSpan ENERGY DELIVERY SERVICES NEW ENGLAND
AND NSTAR GAS COMPANY**

I. Introduction

Pursuant to 220 C.M.R. §§ 1.06 (6)(d)(3), 1.02(4) and 1.03(1)(d), the Attorney General appeals the Hearing Officer's June 2, 2004, ruling permitting the full party status of the KeySpan Energy Delivery New England ("KeySpan") and NSTAR Gas Company ("NSTAR"). The Attorney General's opposition was timely under the rules of the Department of Telecommunications and Energy ("Department"). Since the Hearing Officer's only statement of reasons for granting the motions of NSTAR and KeySpan was the untimeliness of the Attorney General's opposition, the Commission should reverse the Hearing Officer's ruling and deny the requests for full party status. The Attorney General has no objection the KeySpan and NSTAR intervening as limited participants.

II. Standard Of Review

According to 220 § C.M.R. §1.02 (4), parties may file an opposition to a petition to intervene within five days after the petition is filed. Time is computed under the following standard:

Computation of any period of time referred to in 220 CMR 1.00 shall begin with the first day following that on which the act which initiates such period of time occurs. The last day of the period so computed is to be included unless it is a day on which the office of the Department is closed, in which event the period shall run until the end of the next following business day. When such a period of time, with the intervening Saturdays, Sundays, and legal holidays counted, is five days or less, the said Saturdays, Sundays, and legal holidays shall be excluded from the computation; otherwise, such days shall be included in the computation.

220 § C.M.R. 1.02 (4).

III. Argument

On May 26, 2005, NSTAR and KeySpan filed motions to intervene. Hearing Transcript (“Tr.”) June 2, 2005, p. 41. On June 2, 2005, during the procedural conference held at the Department, the Attorney General opposed the intervention of KeySpan and NSTAR as full-party participants. Tr. p 13, ln. 17-21, Tr. p. 41, ln. 24, p. 42, ln. 1-4. The Attorney General sought to limit the parties intervener status from that of full participants to limited participants. The Attorney General requested this change in status based on the belief that KeySpan was planning to sponsor two witnesses during the evidentiary hearings in this case. Tr. p.14, ln. 1-3.

This case already has nine Company witnesses, and the Company is overdue in answering critical discovery. Adding utility companies, as full party intervenors, that may have

plans to sponsor witnesses will complicate the proceedings. None of the other utilities that have intervened in the case have sought full intervenor status. Tr. p.14, ln. 10-14. Further burdening this procedural schedule will interfere with the Attorney General's ability to prepare his case, present evidence and cross examine witnesses. G. L. c. 30A, §11. Given the voluminous issues raised and materials filed in this case, as well as the time constraints associated with this proceeding, if KeySpan does have issues regarding steel replacement and bad debt, it should feel free to file a separate proceeding with the Department. Tr. p. 14, ln. 1-10.

Prior to the procedural conference, communications took place between the Attorney General and counsel for NSTAR and KeySpan regarding intervention. Although the Attorney General may have assented to the interventions during these discussions, that assent was based on the belief that NSTAR and KeySpan would be participating as limited participants only. Tr. p.14, Ln. 19-24. However, on May 31, 2005, two days before the procedural conference, the Hearing Officer issued an e-mail stating that KeySpan was planning to sponsor at least one, possible two, witnesses during the evidentiary hearings phase of this case. See Exhibit A. According to the e-mail, these witnesses were going to address the bare steel pipe replacement program and bad debt. *Id.* Participation at such a level was never disclosed to the Attorney General by KeySpan. KeySpan and NSTAR denied their intent to sponsor witnesses during the evidentiary hearings, Tr. p. 16, ln 15-24; Tr. p. 18, ln. 18-21, although there are few other reasons for seeking full party status.

The presiding Hearing Officer disregarded the Attorney General's opposition to the intervention of KeySpan and NSTAR, stating that the opposition motion was untimely. Tr. p. 42, ln. 5-10. The ruling granted Keyspan and NSTAR full intervenor status.

The petitions to intervene were filed on Thursday May 26, 2005, with five days to respond. Since Saturday, Sunday and Memorial Day are not included in this five day period under 220 § C.M.R. 1.02 (4), the last day to file an opposition to the petitions is Friday June 3, 2005. The Attorney General's opposition on the record during the hearings on June 2, 2005 was within the procedurally allotted time frame. The Hearing Officer abused her discretion by basing her ruling on an incorrect application of the Department's regulations.

IV. Conclusion

For the reasons stated above, the Commission should reverse the decision of the Hearing Officer, and grant NSTAR and KeySpan limited intervener status.

Respectfully Submitted,

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June 3, 2005